

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 4078) TO PROVIDE THAT NO AGENCY MAY TAKE ANY SIGNIFICANT REGULATORY ACTION UNTIL THE UNEMPLOYMENT RATE IS EQUAL TO OR LESS THAN 6.0 PERCENT, AND PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 6082) TO OFFICIALLY REPLACE, WITHIN THE 60-DAY CONGRESSIONAL REVIEW PERIOD UNDER THE OUTER CONTINENTAL SHELF LANDS ACT, PRESIDENT OBAMA'S PROPOSED FINAL OUTER CONTINENTAL SHELF OIL & GAS LEASING PROGRAM (2012-2017) WITH A CONGRESSIONAL PLAN THAT WILL CONDUCT ADDITIONAL OIL AND NATURAL GAS LEASE SALES TO PROMOTE OFFSHORE ENERGY DEVELOPMENT, JOB CREATION, AND INCREASED DOMESTIC ENERGY PRODUCTION TO ENSURE A MORE SECURE ENERGY FUTURE IN THE UNITED STATES, AND FOR OTHER PURPOSES

July 23, 2012.—Referred to the House Calendar and ordered to be printed.

MS. FOXX, from the Committee on Rules, submitted the following

R E P O R T

[To accompany H. Res. __]

The Committee on Rules, having had under consideration House Resolution ____, by a record vote of 6 to 3, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4078, the Regulatory Freeze for Jobs Act of 2012, under a structured rule. The resolution provides two hours of general debate equally divided among and controlled by the chair and ranking minority member of the Committee on the Judiciary and the chair and ranking minority member of the Committee on Oversight and Government Reform. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute consisting of the text of Rules

Committee Print 112-28, as modified by the amendment printed in Part A of this report, shall be considered as adopted. The bill, as amended, shall be considered as read. The resolution waives all points of order against provisions in the bill, as amended. The resolution makes in order only those further amendments to H.R. 4078 printed in Part B of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in Part B of this report. The resolution provides one motion to recommit H.R. 4078 with or without instructions.

The resolution further provides for consideration of H.R. 6082, the Congressional Replacement of President Obama's Energy-Restricting and Job-Limiting Offshore Drilling Plan, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Natural Resources. The resolution waives all points of order against consideration of the bill. The resolution makes in order as original text for the purpose of amendment the amendment in the nature of a substitute consisting of the text of Rules Committee Print 112-29 and provides that it shall be considered as read. The resolution waives all points of order against the amendment in the nature of a substitute made in order as original text. The resolution makes in order only those amendments to H.R. 6082 printed in Part C of this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against the amendments printed in Part C of this report. Finally, the resolution provides one motion to recommit H.R. 6082 with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of H.R. 4078 includes clause 3(c)(4) of rule XIII, which requires the inclusion of general performance goals and objectives in a committee report and section 306 of the Budget Act of 1974, which prohibits the consideration of a bill dealing with any matter within the jurisdiction of the Committee on the Budget unless it is a bill or resolution which has been reported by the Committee on the Budget.

Although the resolution waives all points of order against provisions in H.R. 4078, as amended, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in Part B of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against consideration of H.R. 6082, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendment in the nature of a substitute to H.R. 6082 made in order as original text, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in Part C of this report, the Committee is not aware of any points of order. The waiver is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 332

Motion by Ms. Slaughter to report opens rules for H.R. 4078 and H.R. 6082. Defeated: 3-6

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Nugent.....	Nay	Mr. Polis.....	Yea
Mr. Scott of South Carolina...	Nay		
Mr. Webster.....	Nay		
Mr. Dreier, Chairman.....	Nay		

Rules Committee Record Vote No. 333

Motion by Ms. Slaughter to make in order and provide the appropriate waivers for amendment #71 to H.R. 4078, offered by Rep. Markey (MA), which would exempt regulatory actions that protect the privacy or security of protected health information from Title I and Title II of the bill. The amendment would also exempt regulations that protect individuals from discrimination based on their genetic history from Title I and Title II of the bill. Defeated: 3-6

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Nugent.....	Nay	Mr. Polis.....	Yea
Mr. Scott of South Carolina...	Nay		
Mr. Webster.....	Nay		
Mr. Dreier, Chairman.....	Nay		

Rules Committee Record Vote No. 334

Motion by Ms. Slaughter to make in order and provide the appropriate waivers for amendment #1 to H.R. 6082, offered by Rep. Tonko (NY), which would prohibit the Secretary of the Interior from awarding a lease to a bidder on offshore oil and gas leases if the bidder does not disclose information about the campaign and SuperPac contributions the bidder made to influence an election for federal office during the 5-year period preceding the submission of the bid to the Secretary. Defeated: 3-6

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Nugent.....	Nay	Mr. Polis.....	Yea
Mr. Scott of South Carolina...	Nay		
Mr. Webster.....	Nay		
Mr. Dreier, Chairman.....	Nay		

Rules Committee Record Vote No. 335

Motion by Mr. Hastings of Florida to make in order and provide the appropriate waivers for amendment #15 to H.R. 4078, offered by Rep. Hastings (FL), which would provide an exception to the underlying legislation, permitting agencies to make regulatory actions intended to protect senior citizens' rights and benefits, including access to health care, food stamps, and other programs. Defeated: 3-6

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Nugent.....	Nay	Mr. Polis.....	Yea
Mr. Scott of South Carolina...	Nay		
Mr. Webster.....	Nay		
Mr. Dreier, Chairman.....	Nay		

Rules Committee Record Vote No. 336

Motion by Mr. Polis to make in order and provide the appropriate waivers for the following amendments to H.R. 4078: #18, offered by Rep. Cummings (MD), which would provide an exception for any regulatory action by the Department of Health and Human Services to carry out the Medicare program including any update to payment or reimbursement rates for providers of services or suppliers; amendment #29, offered by Rep. Frank (MA), which would create an exception from Titles I, II, IV, VI, and VII for rules by the financial regulators to address failed self-regulatory organizations, replace unreliable rates, such as LIBOR, or address misleading or inaccurate submissions intended to manipulating the rates, and a separate exception from title III would permit rules to facilitate settlement of claims related to LIBOR submissions; amendment #20 offered by Rep. Miller (CA), which would exempt from the definition of significant regulatory action a

rule that would prevent coal miners from contracting pneumoconiosis (also known as black lung disease) or reduce the number of coal miners contracting that occupational disease; and amendment #34, offered by Rep. Waxman (CA), which would exempt EPA and NHTSA's consensus rule to increase fuel efficiency and reduce carbon pollution from Model Year 2017 – 2025 light-duty cars and trucks and similar rules from the moratorium on regulatory action. Defeated: 3–6

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Nay	Ms. Slaughter.....	Yea
Mr. Woodall.....	Nay	Mr. Hastings of Florida.....	Yea
Mr. Nugent.....	Nay	Mr. Polis.....	Yea
Mr. Scott of South Carolina...	Nay		
Mr. Webster.....	Nay		
Mr. Dreier, Chairman.....	Nay		

Rules Committee Record Vote No. 337

Motion by Ms. Foxx to report the rule. Adopted: 6-3

Majority Members	Vote	Minority Members	Vote
Ms. Foxx.....	Yea	Ms. Slaughter.....	Nay
Mr. Woodall.....	Yea	Mr. Hastings of Florida.....	Nay
Mr. Nugent.....	Yea	Mr. Polis.....	Nay
Mr. Scott of South Carolina...	Yea		
Mr. Webster.....	Yea		
Mr. Dreier, Chairman.....	Yea		

SUMMARY OF THE AMENDMENT IN PART A CONSIDERED AS ADOPTED

Garrett (NJ): Would strike section 603 and add a Sense of Congress that the PCAOB, MSRB, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 should also conduct appropriate cost-benefit analysis on rules the entity issues.

SUMMARY OF THE AMENDMENTS IN PART B MADE IN ORDER

1. Hastings, Alcee (FL): Would provide an exception to the underlying

legislation, permitting agencies to make regulatory actions intended to ensure safe drinking water. (10 minutes)

2. Conyers (MI): Would exempt regulatory actions pertaining to privacy from Title I of the bill and exempts midnight rules pertaining to privacy from Title II of the bill. The amendment would also exempt consent decrees and settlement agreements in an action to compel agency action pertaining to privacy from Title III of the bill. (10 minutes)
3. Kucinich (OH): Would exempt from the provisions of the bill any significant regulatory action specifically aimed at limiting oil speculation. (10 minutes)
4. Lipinski (IL): Would provide an exception for regulations which are intended to promote energy efficiency. (10 minutes)
5. Markey, Edward (MA): Would allow regulations protecting the public from extreme weather, including drought, flooding and catastrophic wildfire, to go forward despite the prohibitions in the underlying bill. (10 minutes)
6. Watt (NC): Would exempt regulatory actions by the U.S. Patent and Trademark Office that streamline the application process for patents and trademarks, including rules implementing the micro entity provision of the Leahy-Smith America Invents Act, from Title I of the bill and exempts midnight rules implementing such provisions from Title II of the bill. The amendment also would exempt consent decrees and settlement agreements in an action to compel agency action by the PTO to help streamline the application process for patents and trademarks from Title III of the bill. (10 minutes)
7. Loebsack (IA): Would allow actions that would lower prices for gasoline, diesel, oil, or other motor fuels. (10 minutes)
8. Richardson (CA): Would ensure that the provisions of the Patient Protection and Affordable Care Act and the health provisions of the Health Care and Education Reconciliation Act of 2010 can be carried out. (10 minutes)
9. Richardson (CA): Would allow regulations that protect consumers under the Fair Credit Reporting Act. (10 minutes)
10. Connolly (VA): Would clarify the procedure for considering a request for a congressional waiver by the President. (10 minutes)
11. Posey (FL): Would require that awarded attorney's fees and costs for small businesses in Title I would be paid out of the administrative budget of the office in the agency that proposed the regulation. (10 minutes)
12. Nadler (NY): Would exempt issues relating to nuclear power plants from the obstacles to establishing safety protections in the following titles of H.R. 4078: Title I (Regulatory Freeze for Jobs Act); Title III (Sunshine for Regulatory Decrees and Settlements Act); Title V (Responsibly and Professionally Invigorating Development (RAPID) Act). (10 minutes)
13. McKinley (WV): Would reduce the term "significant regulatory action" from \$100,000,000 or more to \$50,000,000 or more in annual cost to the economy. This amendment would allow for more oversight on Federal Agency Regulations by lowering the dollar amount threshold. (10 minutes)

14. Schweikert (AZ): Would define "annual cost to the economy" as being inclusive of business revenue, so that determination of the bill's application shall be accurately applied. (10 minutes)
15. Miller, George (CA): Would exempt from the definition of significant regulatory action a rule that would prevent or reduce deaths or injuries caused by explosions and fires related to the ignition of combustible dusts in the workplace. (10 minutes)
16. Woolsey (CA): Would exempt from the definition of significant regulatory action a rule that would prevent or reduce the number of workers suffering electrocutions or other fatalities associated with working on high voltage transmission and distribution lines. (10 minutes)
17. Johnson, Hank (GA): Would exempt from the provisions of the bill a consent decree or settlement agreement pertaining to the Affordable Care Act. (10 minutes)
18. Waters (CA): Would authorize appropriations 1) to enable the SEC and CFTC to carry out the additional cost/benefit analysis requirements under the bill; 2) for costs of litigation incurred by the Commissions related to the requirements under the bill. (10 minutes)
19. Fitzpatrick (PA), Garrett (NJ): Would direct the Securities and Exchange Commission to take into account the large burden of section 404b of Sarbanes-Oxley on companies with a public float less than \$250 million, compared to the benefit. (10 minutes)
20. Posey (FL): Would keep the U.S. Securities and Exchange Commission (SEC) from enforcing or issuing interpretive guidance on climate change. . (10 minutes)
21. Maloney (NY): Would mandate that Title VI cannot take effect until the Chair of the SEC certifies that in conducting the cost benefit analysis no resources will be diverted away from the SEC's mission to protect investors, maintain efficient markets and promote access to capital. (10 minutes)
22. Manzullo (IL), McIntyre (NC): Would require each Federal agency to submit and obtain approval from the Director of the Office of Science and Technology Policy (OSTP) guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of scientific information relied upon by the agency. (10 minutes)
23. Lummis (WY): Would add a new Title to the bill requiring the tracking and reporting of all payments issued pursuant to the Equal Access to Justice Act (EAJA). Would establish a publicly available, online searchable database to access information regarding EAJA payments and the parties involved in the adjudicatory action leading to an EAJA payment. (10 minutes)
24. Lummis (WY): Would add a new Title to the bill that amends the Equal Access to Justice Act (EAJA) to require a consistent net worth limit, and a direct and personal interest in an adjudicatory action to be eligible for an EAJA payment. Would establish a publicly available, online searchable database to access information regarding EAJA payments and the parties involved in the adjudicatory action leading to an EAJA payment. (10 minutes)

25. Posey (FL): Would make it clear that the definition of "significant regulatory action" would include new Treasury regulations regarding non-resident alien deposits. (10 minutes)

SUMMARY OF THE AMENDMENTS IN PART C MADE IN ORDER

1. Hastings, Doc (WA): Manager's Amendment. Would make technical corrections to the underlying bill. (10 minutes)
2. Holt (NJ): Would strike the provision that requires the Secretary of Interior to conduct a single multi-sale environmental impact statement for all of the new areas opened for drilling by the underlying bill. (10 minutes)
3. Richardson (CA): Would add a new section which provides that in determining the areas off the coast of California to be made available for leasing under this Act, the Secretary of the Interior shall consult with the Governor and legislature of the State of California. (10 minutes)
4. Markey, Edward (MA): Would prohibit gas produced under new leases authorized by this legislation from being exported to foreign countries. (10 minutes)
5. Markey, Edward (MA): Would create a statutory requirement that new leases offered pursuant to this act include drilling safety improvements in response to the BP Deepwater Horizon disaster. (10 minutes)
6. Holt (NJ): Would end free drilling in the Gulf of Mexico by requiring oil companies to pay in order to receive new leases on public lands. (10 minutes)
7. Hastings, Alcee (FL): Would require each drilling permit application to include an estimate of how much the price of gasoline will decrease as a result of any oil or gas found under the permit. (10 minutes)
8. Hastings, Alcee (FL): Would require each drilling permit application to include an estimate of the impact on global change of the consumption of any oil or gas found under the permit. (10 minutes)

PART A—TEXT OF AMENDMENT CONSIDERED AS ADOPTED

AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. GARRETT OF NEW JERSEY

Page 76, strike lines 1 through 14 and insert the following (and amend the table of contents accordingly):

1 **SEC. 603. SENSE OF CONGRESS RELATING TO OTHER REGU-**
2 **LATORY ENTITIES.**

3 It is the sense of the Congress that other regulatory
4 entities, including the Public Company Accounting Over-
5 sight Board, the Municipal Securities Rulemaking Board,
6 and any national securities association registered under
7 section 15A of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o-3) should also follow the requirements of sec-
9 tion 23(e) of such Act, as added by this title.



PART B—TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
HASTINGS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

#16
revised

AMENDMENT TO RULES COMMITTEE PRINT 112-

28

(TEXT OF H.R. 4078)

OFFERED BY MR. HASTINGS OF FLORIDA

Page 3, line 18, strike “or (d)” and insert the following: “(d), or (e)”.

Page 5, insert after line 7 the following:

1 (e) SIGNIFICANT REGULATORY ACTIONS ENSURING
2 SAFE DRINKING WATER.—The moratorium in section
3 102(a) shall not apply to any significant regulatory action
4 that is intended to ensure that drinking water is safe to
5 drink.

Page 10, insert after line 13 the following and redesignate provisions accordingly:

6 (c) SAFE DRINKING WATER EXCEPTION.—Section
7 202 shall not apply to a midnight rule that is intended
8 to ensure that drinking water is safe to drink.

Page 20, insert after line 12 the following:

9 **SEC. 305. EXCEPTION FOR SAFE DRINKING WATER.**

10 The provisions of this title do not apply to any con-
11 sent decree or settlement agreement pertaining to a regu-

1 latory action that is intended to ensure that drinking

2 water is safe to drink.



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
CONYERS JR. OF MICHIGAN OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 112-
28
(TEXT OF H.R. 4078)
OFFERED BY MR. CONYERS OF MICHIGAN

Page 3, line 18, strike “or (d)” and insert the following: “(d), or (e)”.

Page 5, insert after line 7 the following:

1 (e) EXCEPTION FOR REGULATORY ACTIONS PER-
2 TAINING TO PRIVACY.—An agency may take a significant
3 regulatory action if the significant regulatory action per-
4 tains to privacy.

Page 10, insert after line 13 the following and redesignate provisions accordingly:

5 (c) PRIVACY EXCEPTION.—Section 202 shall not
6 apply to a midnight rule if the midnight rule pertains to
7 privacy.

Page 19, insert after line 25 the following:

8 (d) EXCEPTION.—This section shall not apply in the
9 case of any consent decree or settlement agreement in an
10 action to compel agency action pertaining to privacy.



3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE KUCINICH OF OHIO OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MR. KUCINICH OF OHIO

Page 3, line 18, strike “or (d)” and insert “(d), or (e)”.

Page 5, after line 7, insert the following new subsection:

- 1 (e) EXCEPTION FOR LIMITING OIL SPECULATION.—
- 2 The prohibition in section 102(a) shall not apply to any
- 3 significant regulatory action specifically aimed at limiting
- 4 oil speculation.



4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
LIPINSKI OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. LIPINSKI OF ILLINOIS**

Page 3, line 18, strike “or (d)” and insert the following: “(d), or (e)”.

Page 5, insert after line 7 the following:

1 (e) SIGNIFICANT REGULATORY ACTIONS PROMOTING
2 ENERGY EFFICIENCY.—An agency may take any signifi-
3 cant regulatory action that is intended to promote energy
4 efficiency.

Page 10, insert after line 13 the following and redesignate provisions accordingly:

5 (c) PROMOTION OF ENERGY EFFICIENCY EXCEP-
6 TION.—Section 202 shall not apply to a midnight rule that
7 is intended to promote energy efficiency.

Page 20, insert after line 12 the following:

1 **SEC. 305. EXCEPTION FOR PROMOTION OF ENERGY EFFI-**
2 **CIENCY.**

3 The provisions of this title do not apply to any con-
4 sent decree or settlement agreement pertaining to a regu-
5 latory action that is intended to promote energy efficiency.



5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. MARKEY OF MASSACHUSETTS**

Page 3, line 18, strike “or (d)” and insert “(d), or (e)”.

Page 5, after line 7, insert the following new subsection:

1 (e) ADDITIONAL EXCEPTION.—An agency may take
2 a significant regulatory action if such action would protect
3 the public from extreme weather events, including
4 drought, flooding, and catastrophic wildfire.

Page 10, after line 4, insert the following new paragraph:

5 (3) necessary to protect the public from ex-
6 treme weather events, including drought, flooding,
7 and catastrophic wildfire;

Page 10, line 5, strike “(3)” and insert “(4)”.

Page 10, line 7, strike “(4)” and insert “(5)”.



6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT OF NORTH CAROLINA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 112-

28

(TEXT OF H.R. 4078)

OFFERED BY MR. CONYERS OF MICHIGAN

MR. Watt of North Carolina

Page 3, line 18, strike “or (d)” and insert the following: “(d), or (e)”.

Page 5, insert after line 7 the following:

1 (e) EXCEPTION FOR REGULATORY ACTIONS PER-
2 TAINING TO CERTAIN INTELLECTUAL PROPERTY
3 RULES.—An agency may take a significant regulatory ac-
4 tion if the significant regulatory action is a regulatory ac-
5 tion by the United States Patent and Trademark Office
6 that will help streamline the application processes for pat-
7 ents and trademarks, including rules implementing the
8 micro entity provision of the Leahy-Smith America In-
9 vents Act.

Page 10, insert after line 13 the following and redesignate provisions accordingly:

10 (c) INTELLECTUAL PROPERTY EXCEPTION.—Section
11 202 shall not apply to a midnight rule if the midnight
12 rule is a rule made by the United States Patent and
13 Trademark Office that will help streamline the application

1 processes for patents and trademarks, including regula-
2 tions implementing the micro entity provision of the
3 Leahy-Smith America Invents Act.

Page 19, insert after line 25 the following:

4 (d) EXCEPTION.—This section shall not apply in the
5 case of any consent decree or settlement agreement in an
6 action to compel agency action by the United States Pat-
7 ent and Trademark Office that will help streamline the
8 application processes for patents and trademarks, includ-
9 ing regulations implementing the micro entity provision of
10 the Leahy-Smith America Invents Act.



7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
LOEBSACK OF IOWA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. LOEBACK

Page 3, line 18, strike “or (d)” and insert “(d), or (e)”.

Page 5, after line 7, insert the following new subsection:

1 (e) CONSUMER PROTECTION FROM HIGH FUELS
2 PRICES EXCEPTION.—An agency may take a significant
3 regulatory action if such action would have the effect of
4 lowering the price of oil or the wholesale or retail price
5 of oil, gasoline, diesel, or other motor fuels.

Page 10, after line 4, insert the following new paragraph:

6 (3) likely to result in lower oil prices or lower
7 wholesale or retail prices for oil, gasoline, diesel, or
8 other motor fuels;



8. **AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
RICHARDSON OF CALIFORNIA OR HER DESIGNEE, DEBATABLE
FOR 10 MINUTES**

AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MS. RICHARDSON OF CALIFORNIA

Page 3, after line 26, insert the following new paragraph:

1 (3) necessary to properly implement the provi-
2 sions of (and amendments made by) the Patient
3 Protection and Affordable Care Act (Public Law
4 111-148) and the provisions of (and amendments
5 made by) title I and subtitle B of title II of the
6 Health Care and Education Reconciliation Act of
7 2010 (Public Law 111-152);



9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
RICHARDSON OF CALIFORNIA OR HER DESIGNEE, DEBATABLE
FOR 10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MS. RICHARDSON OF CALIFORNIA

Page 3, after line 26, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

- 1 (3) necessary to carry out the Fair Credit Re-
- 2 porting Act;



10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
CONNOLLY OF VIRGINIA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO H.R.
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MR. CONNOLLY OF VIRGINIA

Page 5, strike lines 4 through 7 and insert the following:

1 (3) CONGRESSIONAL ACTION.—With respect to
2 any submission by the President under this sub-
3 section—

4 (A) Congress shall give expeditious consid-
5 eration to the submission by taking appropriate
6 action not later than the end of a 7-day period
7 beginning on the date on which the submission
8 is received; and

9 (B) in the case that Congress fails to act
10 upon the submission during such period, section
11 102(a) shall not apply.



11. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POSEY
OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Bill Posey 498

AMENDMENT TO RULES COMMITTEE PRINT 112-

28

(TEXT OF H.R. 4078)

OFFERED BY MR. POSEY OF FLORIDA

Page 6, line 14, insert after the period the following:
“Such award shall be paid out of the administrative
budget of the office in the agency that took the chal-
lenged agency action.”.



12. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
NADLER OF NEW YORK OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MR. NADLER OF NEW YORK

Page 8, line 2, insert after “guidance” the following:
“(other than a rule or guidance regarding the safety of
a civilian nuclear power plant)”.

Page 19, after line 25, insert the following new sub-
section:

1 (d) EXCEPTION.—The provisions of this title shall
2 not apply in the case of a consent decree or settlement
3 agreement pertaining to a civilian nuclear power plant.

Page 65, line 17, strike “section (p)” and insert
“sections (p) and (q)”.

Page 66, after line 5, insert the following:

4 “(q) EXCEPTION FOR CERTAIN PROJECTS.—This
5 subchapter does not apply in the case of any project that
6 pertains to the safety of a civilian nuclear power plant.”.



13. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MCKINLEY OF WEST VIRGINIA OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MR. MCKINLEY OF WEST VIRGINIA

Page 8, line 5, strike "\$100,000,000" and insert
"\$50,000,000".

Page 8, line 25, strike "\$100,000,000" and insert
"\$50,000,000".

Page 27, line 18, strike "\$100,000,000" and insert
"\$50,000,000".



14. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SCHWEIKERT OF ARIZONA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

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**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY MR. SCHWEIKERT OF ARIZONA

Page 8, line 10, insert after the period the following:
“In determining the annual cost to the economy under
this paragraph, the Administrator shall take into account
any expected change in revenue of businesses that will be
caused by such regulatory action, as well as any change
in revenue of businesses that has already taken place as
businesses prepare for the implementation of the regu-
latory action.”.



15. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MILLER OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY George Miller

Page 8, line 10, insert after the period the following:

“Such term does not include a rule that would prevent or reduce deaths or injuries caused by explosions and fires related to the ignition of combustible dusts in the workplace.”.

Page 10, after line 13, insert the following:

1 (c) **ADDITIONAL EXCEPTION.**—Section 202 shall not
2 apply to a rule that would prevent or reduce deaths or
3 injuries caused by explosions and fires related to the igni-
4 tion of combustible dusts in the workplace.

Page 10, line 14, strike “(c)” and insert “(d)”.



16. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
WOOLSEY OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR
10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

OFFERED BY

Ms. Woolsey

Page 8, line 10, insert after the period the following:
“Such term does not include a rule that would prevent
or reduce the number of workers suffering electrocutions
or other fatalities associated with working on high voltage
transmission and distribution lines.”.

Page 10, after line 13, insert the following:

1 (c) **ADDITIONAL EXCEPTION.**—Section 202 shall not
2 apply to a rule that would prevent or reduce the number
3 of workers suffering electrocutions or other fatalities asso-
4 ciated with working on high voltage transmission and dis-
5 tribution lines.

Page 10, line 14, strike “(c)” and insert “(d)”.



17. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
JOHNSON OF GEORGIA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

45

AMENDMENT TO RULES COMMITTEE PRINT 112-
28
(TEXT OF H.R. 4078)
OFFERED BY MR. JOHNSON OF GEORGIA

Page 12, line 13, strike “The provisions” and insert
“Except as provided in subsection (d), the provisions”.

Page 19, insert after line 25 the following:

1 (d) EXCEPTION.—The provisions of this title shall
2 not apply in the case of consent decree or settlement
3 agreement pertaining to the Patient Protection and Af-
4 fordable Care Act.



18. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
WATERS OF CALIFORNIA OR HER DESIGNEE, DEBATABLE FOR
10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
OFFERED BY MS. WATERS**

Page 67, line 24, strike “shall—” and insert “shall, subject to appropriations made specifically for such purpose pursuant to paragraph (7)—”.

Page 69, line 3, insert “, subject to appropriations made specifically for such purpose pursuant to paragraph (7),” after “shall”.

Page 71, line 7, insert “, subject to appropriations made specifically for such purpose pursuant to paragraph (7),” after “shall”.

Page 75, line 22, strike the close quotation mark and following period and after such line insert the following:

- 1 “(7) AUTHORIZATION OF APPROPRIATIONS.—
- 2 “(A) IN GENERAL.—There is authorized to
- 3 be appropriated to carry out this subsection
- 4 such sums as may be necessary for fiscal year
- 5 2013.
- 6 “(B) COVERED EXPENSES.—Funds appro-
- 7 priated pursuant to this paragraph shall be for

1 any costs incurred by the Commission in car-
2 rying out the requirements of this subsection,
3 including any costs of litigation related to the
4 requirements of this subsection.”.

Page 77, line 4, strike “shall” and insert “shall,
subject to appropriations made specifically for such pur-
pose pursuant to paragraph (3),”.

Page 77, line 15, insert “, subject to appropriations
made specifically for such purpose pursuant to paragraph
(3),” after “shall”.

Page 78, line 22, strike the close quotation mark
and following period and after such line insert the fol-
lowing:

5 “(3) AUTHORIZATION OF APPROPRIATIONS.—

6 “(A) IN GENERAL.—There is authorized to
7 be appropriated to carry out this subsection
8 such sums as may be necessary for fiscal year
9 2013.

10 “(B) COVERED EXPENSES.—Funds appro-
11 priated pursuant to this paragraph shall be for
12 any costs incurred by the Commission in car-
13 rying out the requirements of this subsection,

1 including any costs of litigation related to the
2 requirements of this subsection.”.



19. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
FITZPATRICK OF PENNSYLVANIA OR HIS DESIGNEE,
DEBATABLE FOR 10 MINUTES

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**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)**

**OFFERED BY MR. FITZPATRICK OF PENNSYLVANIA
AND MR. GARRETT OF NEW JERSEY**

Page 71, line 12, add at the end the following: "In reviewing any regulation (including, notwithstanding paragraph (6), a regulation issued in accordance with formal rulemaking provisions) that subjects issuers with a public float of \$250,000,000 or less to the attestation and reporting requirements of section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)), the Commission shall specifically take into account the large burden of such regulation when compared to the benefit of such regulation."



20. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POSEY
OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. POSEY OF FLORIDA

Add at the end of title VI the following (and conform the table of contents accordingly):

1 SEC. 604. INTERPRETIVE GUIDANCE NULL AND VOID.

2 Notwithstanding any other provision of law, no interpretive guidance issued by the Securities and Exchange
3 Commission on or after the effective date of this Act relating to “Commission Guidance Regarding Disclosure Related to Climate Change”, affecting parts 211, 231, and
4 249 of title 17, Code of Federal Regulations (as described
5 in Commission Release Nos. 33-9106; 34-61469; FR-
6 82), or any successor thereto, may take effect, and such
7 guidance shall have no force or effect with respect to any
8 person on or after February 2, 2010.

12 SEC. 605. OTHER SEC ACTION PROHIBITED.

13 (a) FURTHER GUIDANCE RELATED TO CLIMATE
14 CHANGE.—The Commission may not issue any interpretive guidance with respect to disclosures related to climate
15 change on or after the effective date of this Act.

over

1 (b) VOLUNTARY SUBMISSIONS.—The Commission
2 may not issue any interpretive guidance that would estab-
3 lish any requirements with respect to the content of or
4 format for any disclosures related to climate change volun-
5 tarily submitted by any entity to the Commission on or
6 after the effective date of this Act.

7 (c) CIVIL AND ADMINISTRATIVE ACTIONS.—No civil
8 or administrative action or proceeding pertaining to disclo-
9 sures related to climate change may be initiated by the
10 Commission on or after the date of the enactment of this
11 Act and any such actions or proceedings pending on such
12 date shall be terminated.

13 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
14 tion shall be construed as to—

15 (1) prohibit the Commission from issuing inter-
16 pretive guidance with respect to disclosures related
17 to non-anthropogenic or natural climate variability
18 observed over comparable time periods; or

19 (2) terminate an administrative action or pro-
20 ceeding pertaining to such disclosures.



21. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MALONEY OF NEW YORK OR HER DESIGNEE, DEBATABLE FOR
10 MINUTES

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AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MRS. MALONEY OF NEW YORK

Page 76, after line 14, insert the following new section (and conform the table of contents accordingly):

1 SEC. 604. EFFECTIVE DATE.

2 This title, and the amendments made by this title,
3 shall not take effect until the date on which the Chairman
4 of the Securities and Exchange Commission certifies to
5 the Congress that implementing the provisions of this title,
6 and the amendments made by this title, will not divert
7 resources from the Commission's mission to protect inves-
8 tors, maintain fair, orderly, and efficient markets, and fa-
9 cilitate capital formation.



22. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MANZULLO OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 112-

28

(TEXT OF H.R. 4078)

OFFERED BY MR. MANZULLO OF ILLINOIS

Add at the end of the bill the following:

1 TITLE VIII—ENSURING HIGH
2 STANDARDS FOR AGENCY
3 USE OF SCIENTIFIC INFOR-
4 MATION

5 SEC. 801. REQUIREMENT FOR FINAL GUIDELINES.

6 (a) IN GENERAL.—Not later than January 1, 2013,
7 each Federal agency shall have in effect guidelines for en-
8 suring and maximizing the quality, objectivity, utility, and
9 integrity of scientific information relied upon by such
10 agency.

11 (b) CONTENT OF GUIDELINES.—The guidelines de-
12 scribed in subsection (a), with respect to a Federal agency,
13 shall ensure that—

14 (1) when scientific information is considered by
15 the agency in policy decisions—

16 (A) the information is subject to well-es-
17 tablished scientific processes, including peer re-
18 view where appropriate;

1 (B) the agency appropriately applies the
2 scientific information to the policy decision;

3 (C) except for information that is pro-
4 tected from disclosure by law or administrative
5 practice, the agency makes available to the pub-
6 lic the scientific information considered by the
7 agency;

8 (D) the agency gives greatest weight to in-
9 formation that is based on experimental, empir-
10 ical, quantifiable, and reproducible data that is
11 developed in accordance with well-established
12 scientific processes; and

13 (E) with respect to any proposed rule
14 issued by the agency, such agency follows proce-
15 dures that include, to the extent feasible and
16 permitted by law, an opportunity for public
17 comment on all relevant scientific findings;

18 (2) the agency has procedures in place to make
19 policy decisions only on the basis of the best reason-
20 ably obtainable scientific, technical, economic, and
21 other evidence and information concerning the need
22 for, consequences of, and alternatives to the deci-
23 sion; and

24 (3) the agency has in place procedures to iden-
25 tify and address instances in which the integrity of

1 scientific information considered by the agency may
2 have been compromised, including instances in which
3 such information may have been the product of a
4 scientific process that was compromised.

5 (c) APPROVAL NEEDED FOR POLICY DECISIONS TO
6 TAKE EFFECT.—No policy decision issued after January
7 1, 2013, by an agency subject to this section may take
8 effect prior to such date that the agency has in effect
9 guidelines under subsection (a) that have been approved
10 by the Director of the Office of Science and Technology
11 Policy.

12 (d) POLICY DECISIONS NOT IN COMPLIANCE.—A
13 policy decision of an agency that does not comply with
14 guidelines approved under subsection (c) shall be deemed
15 to be arbitrary, capricious, an abuse of discretion, and oth-
16 erwise not in accordance with law.

17 (e) DEFINITIONS.—For purposes of this section:

18 (1) AGENCY.—The term “agency” has the
19 meaning given such term in section 551(1) of title
20 5, United States Code.

21 (2) POLICY DECISION.—The term “policy deci-
22 sion” means, with respect to an agency, an agency
23 action as defined in section 551(13) of title 5,
24 United States Code, (other than an adjudication, as

1 defined in section 551(7) of such title), and in-
2 cludes—

3 (A) the listing, labeling, or other identifica-
4 tion of a substance, product, or activity as haz-
5 ardous or creating risk to human health, safety,
6 or the environment; and

7 (B) agency guidance.

8 (3) AGENCY GUIDANCE.—The term “agency
9 guidance” means an agency statement of general ap-
10 plicability and future effect, other than a regulatory
11 action, that sets forth a policy on a statutory, regu-
12 latory, or technical issue or on an interpretation of
13 a statutory or regulatory issue.



23. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
LUMMIS OF WYOMING OR HER DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO H.R. 4078, AS REPORTED
OFFERED BY MRS. LUMMIS OF WYOMING**

Add after title VII the following new title (and conform the table of contents accordingly):

**1 TITLE VIII—TRACKING THE
2 COST TO TAXPAYERS OF FEDERAL
3 LITIGATION**

4 SEC. 801. SHORT TITLE.

5 This title may be cited as the “Tracking the Cost to
6 Taxpayers of Federal Litigation Act”.

**7 SEC. 802. MODIFICATION OF EQUAL ACCESS TO JUSTICE
8 PROVISIONS.**

9 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,
10 United States Code, is amended—

11 (1) in subsection (c)(1), by striking “, United
12 States Code”; and

13 (2) by striking subsections (e) and (f) and inserting the following:
14

15 “(e)(1) The Chairman of the Administrative Conference of the United States, after consultation with the
16 Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the
17 amount of fees and other expenses awarded during the
18
19

1 preceding fiscal year pursuant to this section. The report
2 shall describe the number, nature, and amount of the
3 awards, the claims involved in the controversy, and any
4 other relevant information that may aid the Congress in
5 evaluating the scope and impact of such awards. Each
6 agency shall provide the Chairman in a timely manner all
7 information necessary for the Chairman to comply with
8 the requirements of this subsection. The report shall be
9 made available to the public online.

10 “(2)(A) The report required by paragraph (1) shall
11 account for all payments of fees and other expenses
12 awarded under this section that are made pursuant to a
13 settlement agreement, regardless of whether the settle-
14 ment agreement is sealed or otherwise subject to non-
15 disclosure provisions, except that any version of the report
16 made available to the public may not reveal any informa-
17 tion the disclosure of which is contrary to the national se-
18 curity of the United States.

19 “(B) The disclosure of fees and other expenses re-
20 quired under subparagraph (A) does not affect any other
21 information that is subject to nondisclosure provisions in
22 the settlement agreement.

23 “(f) The Chairman of the Administrative Conference
24 shall create and maintain online a searchable database

1 containing the following information with respect to each
2 award of fees and other expenses under this section:

3 “(1) The name of each party to whom the
4 award was made.

5 “(2) The name of each counsel of record rep-
6 resenting each party to whom the award was made.

7 “(3) The agency to which the application for
8 the award was made.

9 “(4) The name of each counsel of record rep-
10 resenting the agency to which the application for the
11 award was made.

12 “(5) The name of each administrative law
13 judge, and the name of any other agency employee
14 serving in an adjudicative role, in the adversary ad-
15 judication that is the subject of the application for
16 the award.

17 “(6) The amount of the award.

18 “(7) The names and hourly rates of each expert
19 witness for whose services the award was made
20 under the application.

21 “(8) The basis for the finding that the position
22 of the agency concerned was not substantially justi-
23 fied.

24 “(g) The online searchable database described in sub-
25 section (f) may not reveal any information the disclosure

1 of which is prohibited by law or court order, or the disclo-
2 sure of which is contrary to the national security of the
3 United States.”.

4 (b) COURT CASES.—Section 2412(d) of title 28,
5 United States Code, is amended by adding at the end the
6 following:

7 “(5)(A) The Chairman of the Administrative Con-
8 ference of the United States shall report annually to the
9 Congress on the amount of fees and other expenses award-
10 ed during the preceding fiscal year pursuant to this sub-
11 section. The report shall describe the number, nature, and
12 amount of the awards, the claims involved in each con-
13 troversy, and any other relevant information which may
14 aid the Congress in evaluating the scope and impact of
15 such awards. Each agency shall provide the Chairman
16 with such information as is necessary for the Chairman
17 to comply with the requirements of this paragraph. The
18 report shall be made available to the public online.

19 “(B)(i) The report required by subparagraph (A)
20 shall account for all payments of fees and other expenses
21 awarded under this subsection that are made pursuant to
22 a settlement agreement, regardless of whether the settle-
23 ment agreement is sealed or otherwise subject to non-
24 disclosure provisions, except that any version of the report
25 made available to the public may not reveal any informa-

1 tion the disclosure of which is contrary to the national se-
2 curity of the United States.

3 “(ii) The disclosure of fees and other expenses re-
4 quired under clause (i) does not affect any other informa-
5 tion that is subject to nondisclosure provisions in the set-
6 tlement agreement.

7 “(C) The Chairman of the Administrative Conference
8 shall include and clearly identify in the annual report
9 under subparagraph (A), for each case in which an award
10 of fees and other expenses is included in the report—

11 “(i) any amounts paid from section 1304 of
12 title 31 for a judgment in the case;

13 “(ii) the amount of the award of fees and other
14 expenses; and

15 “(iii) the statute under which the plaintiff filed
16 suit.

17 “(6) The Chairman of the Administrative Conference
18 shall create and maintain online a searchable database
19 containing the following information with respect to each
20 award of fees and other expenses under this subsection:

21 “(A) The name of each party to whom the
22 award was made.

23 “(B) The name of each counsel of record rep-
24 resenting each party to whom the award was made.

25 “(C) The agency involved in the case.

1 “(D) The name of each counsel of record rep-
2 resenting the agency involved in the case.

3 “(E) The name of each judge in the case, and
4 the court in which the case was heard.

5 “(F) The amount of the award.

6 “(G) The names and hourly rates of each ex-
7 pert witness for whose services the award was made.

8 “(H) The basis for the finding that the position
9 of the agency concerned was not substantially justi-
10 fied.

11 “(7) The online searchable database described in
12 paragraph (6) may not reveal any information the dislo-
13 sure of which is prohibited by law or court order, or the
14 disclosure of which is contrary to the national security of
15 the United States.

16 “(8) The Attorney General of the United States shall
17 provide to the Chairman of the Administrative Conference
18 of the United States in a timely manner all information
19 necessary for the Chairman to carry out the Chairman’s
20 responsibilities under this subsection.”.

21 (c) CLERICAL AMENDMENT.—Section 2412(e) of title
22 28, United States Code, is amended by striking “of section
23 2412 of title 28, United States Code,” and inserting “of
24 this section”.



24. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
LUMMIS OF WYOMING OR HER DESIGNEE, DEBATABLE FOR 10
MINUTES

**AMENDMENT TO H.R. 4078, AS REPORTED
OFFERED BY MRS. LUMMIS OF WYOMING**

Add after title VII the following new title (and conform the table of contents accordingly):

**TITLE VIII—GOVERNMENT
LITIGATION SAVINGS**

SEC. 801. SHORT TITLE.

This title may be cited as the “Government Litigation Savings Act”.

**SEC. 802. MODIFICATION OF EQUAL ACCESS TO JUSTICE
PROVISIONS.**

(a) AGENCY PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by inserting after the first sentence the following: “Fees and other expenses may be awarded under this subsection only to a prevailing party who has a direct and personal interest in the adversary adjudication because of medical costs, property damage, denial of benefits, unpaid disbursement, fees and other expenses in-

1 curred in defense of the adjudication, in-
2 terest in a policy concerning such medical
3 costs, property damage, denial of benefits,
4 unpaid disbursement, or fees and other ex-
5 penses, or otherwise.”; and

6 (ii) by adding at the end the fol-
7 lowing: “The agency conducting the adver-
8 sary adjudication shall make any party
9 against whom the adjudication is brought,
10 at the time the adjudication is commenced,
11 aware of the provisions of this section.”;
12 and

13 (B) in paragraph (3), in the first sen-
14 tence—

15 (i) by striking “may reduce” and in-
16 serting “shall reduce”; and

17 (ii) by striking “unduly and unreason-
18 ably” and inserting “unduly or unreason-
19 ably”;

20 (2) in subsection (b)(1)(B)(ii), by striking “;
21 except that” and all that follows through “section
22 601;” and inserting “except that—

23 “(I) the net worth of a party (other than
24 an individual or a unit of local government)

1 shall include the net worth of any parent entity
2 or subsidiary of that party; and

3 “(II) for purposes of subclause (I)—

4 “(aa) a ‘parent entity’ of a party is an
5 entity that owns or controls the equity or
6 other evidences of ownership in that party;
7 and

8 “(bb) a ‘subsidiary’ of a party is an
9 entity the equity or other evidences of own-
10 ership in which are owned or controlled by
11 that party;”;

12 (3) in subsection (c)(1), by striking “, United
13 States Code”; and

14 (4) by striking subsections (e) and (f) and in-
15 serting the following:

16 “(e)(1) The Chairman of the Administrative Con-
17 ference of the United States, after consultation with the
18 Chief Counsel for Advocacy of the Small Business Admin-
19 istration, shall report annually to the Congress on the
20 amount of fees and other expenses awarded during the
21 preceding fiscal year pursuant to this section. The report
22 shall describe the number, nature, and amount of the
23 awards, the claims involved in the controversy, and any
24 other relevant information that may aid the Congress in
25 evaluating the scope and impact of such awards. Each

1 agency shall provide the Chairman in a timely manner all
2 information necessary for the Chairman to comply with
3 the requirements of this subsection. The report shall be
4 made available to the public online.

5 “(2)(A) The report required by paragraph (1) shall
6 account for all payments of fees and other expenses
7 awarded under this section that are made pursuant to a
8 settlement agreement, regardless of whether the settle-
9 ment agreement is sealed or otherwise subject to non-
10 disclosure provisions, except that any version of the report
11 made available to the public may not reveal any informa-
12 tion the disclosure of which is contrary to the national se-
13 curity of the United States.

14 “(B) The disclosure of fees and other expenses re-
15 quired under subparagraph (A) does not affect any other
16 information that is subject to nondisclosure provisions in
17 the settlement agreement.

18 “(f) The Chairman of the Administrative Conference
19 shall create and maintain online a searchable database
20 containing the following information with respect to each
21 award of fees and other expenses under this section:

22 “(1) The name of each party to whom the
23 award was made.

24 “(2) The name of each counsel of record rep-
25 resenting each party to whom the award was made.

1 “(3) The agency to which the application for
2 the award was made.

3 “(4) The name of each counsel of record rep-
4 resenting the agency to which the application for the
5 award was made.

6 “(5) The name of each administrative law
7 judge, and the name of any other agency employee
8 serving in an adjudicative role, in the adversary ad-
9 judication that is the subject of the application for
10 the award.

11 “(6) The amount of the award.

12 “(7) The names and hourly rates of each expert
13 witness for whose services the award was made
14 under the application.

15 “(8) The basis for the finding that the position
16 of the agency concerned was not substantially justi-
17 fied.

18 “(g) The online searchable database described in sub-
19 section (f) may not reveal any information the disclosure
20 of which is prohibited by law or court order, or the disclo-
21 sure of which is contrary to the national security of the
22 United States.”.

23 (b) COURT CASES.—Section 2412(d) of title 28,
24 United States Code, is amended—

(1) by amending paragraph (1)(A) to read as follows: “(A) Except as otherwise specifically provided by statute, a court, in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, shall award to a prevailing party (other than the United States) fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in the civil action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust. Fees and other expenses may be awarded under this paragraph only to a prevailing party who has a direct and personal interest in the civil action because of medical costs, property damage, denial of benefits, unpaid disbursement, fees and other expenses incurred in defense of the civil action, interest in a policy concerning such medical costs, property damage, denial of benefits, unpaid disbursement, or fees and other expenses, or otherwise.”;

(2) in paragraph (1)(C)—

(A) by striking “court, in its discretion, may” and inserting “court shall”; and

1 (B) by striking “unduly and unreasonably”
2 and inserting “unduly or unreasonably”;

3 (3) in paragraph (2)(B)(ii), by striking “; ex-
4 cept that” and all that follows through “section 601
5 of title 5;” and inserting: “except that—

6 “(I) the net worth of a party (other than
7 an individual or a unit of local government)
8 shall include the net worth of any parent entity
9 or subsidiary of that party; and

10 “(II) for purposes of subelause (I)—

11 “(aa) a ‘parent entity’ of a party is an
12 entity that owns or controls the equity or
13 other evidences of ownership in that party;
14 and

15 “(bb) a ‘subsidiary’ of a party is an
16 entity the equity or other evidences of own-
17 ership in which are owned or controlled by
18 that party;”; and

19 (4) by adding at the end the following:

20 “(5)(A) The Chairman of the Administrative Con-
21 ference of the United States shall report annually to the
22 Congress on the amount of fees and other expenses award-
23 ed during the preceding fiscal year pursuant to this sub-
24 section. The report shall describe the number, nature, and
25 amount of the awards, the claims involved in each con-

1 troversy, and any other relevant information which may
2 aid the Congress in evaluating the scope and impact of
3 such awards. Each agency shall provide the Chairman
4 with such information as is necessary for the Chairman
5 to comply with the requirements of this paragraph. The
6 report shall be made available to the public online.

7 “(B)(i) The report required by subparagraph (A)
8 shall account for all payments of fees and other expenses
9 awarded under this subsection that are made pursuant to
10 a settlement agreement, regardless of whether the settle-
11 ment agreement is sealed or otherwise subject to non-
12 disclosure provisions, except that any version of the report
13 made available to the public may not reveal any informa-
14 tion the disclosure of which is contrary to the national se-
15 curity of the United States.

16 “(ii) The disclosure of fees and other expenses re-
17 quired under clause (i) does not affect any other informa-
18 tion that is subject to nondisclosure provisions in the set-
19 tlement agreement.

20 “(C) The Chairman of the Administrative Conference
21 shall include and clearly identify in the annual report
22 under subparagraph (A), for each case in which an award
23 of fees and other expenses is included in the report—

24 “(i) any amounts paid from section 1304 of
25 title 31 for a judgment in the case;

1 “(ii) the amount of the award of fees and other
2 expenses; and

3 “(iii) the statute under which the plaintiff filed
4 suit.

5 “(6) The Chairman of the Administrative Conference
6 shall create and maintain online a searchable database
7 containing the following information with respect to each
8 award of fees and other expenses under this subsection:

9 “(A) The name of each party to whom the
10 award was made.

11 “(B) The name of each counsel of record rep-
12 resenting each party to whom the award was made.

13 “(C) The agency involved in the case.

14 “(D) The name of each counsel of record rep-
15 resenting the agency involved in the case.

16 “(E) The name of each judge in the case, and
17 the court in which the case was heard.

18 “(F) The amount of the award.

19 “(G) The names and hourly rates of each ex-
20 pert witness for whose services the award was made.

21 “(H) The basis for the finding that the position
22 of the agency concerned was not substantially justi-
23 fied.

24 “(7) The online searchable database described in
25 paragraph (6) may not reveal any information the disclo-

1 sure of which is prohibited by law or court order, or the
2 disclosure of which is contrary to the national security of
3 the United States.

4 “(8) The Attorney General of the United States shall
5 provide to the Chairman of the Administrative Conference
6 of the United States in a timely manner all information
7 necessary for the Chairman to carry out the Chairman’s
8 responsibilities under this subsection.”.

9 (c) CLERICAL AMENDMENT.—Section 2412(e) of title
10 28, United States Code, is amended by striking “of section
11 2412 of title 28, United States Code,” and inserting “of
12 this section”.



25. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE POSEY
OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

**AMENDMENT TO
RULES COMMITTEE PRINT 112-28
(TEXT OF H.R. 4078)
OFFERED BY MR. POSEY OF FLORIDA**

*Bill Posey
Rank #68
v2*

Page 8, line 10, after the period insert the following:

If meeting that definition, such term includes any requirement by the Secretary of the Treasury, except to the extent provided in Treasury Regulations as in effect on February 21, 2011, that a payor of interest make an information return in the case of interest—

(1) which is described in section 871(i)(2)(A) of the Internal Revenue Code of 1986, and

(2) which is paid—

(A) to a nonresident alien, and

(B) on a deposit maintained at an office within the United States.



PART C--TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
HASTINGS OF WASHINGTON OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES

19

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. HASTINGS OF WASHINGTON

Page 1, beginning at line 11, strike "PROPOSED OIL AND GAS LEASING PROGRAM (2012-2017)" and insert "PROPOSED FINAL OUTER CONTINENTAL SHELF OIL & GAS LEASING PROGRAM (2012-2017)".

Page 1, line 14, strike "plan" and insert "program".



2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOLT
OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. HOLT OF NEW JERSEY

Beginning at page 5, line 22, strike section 6.



3. **AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
RICHARDSON OF CALIFORNIA OR HER DESIGNEE, DEBATABLE
FOR 10 MINUTES**

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MS. RICHARDSON OF CALIFORNIA

Page 7, strike line 3 and insert the following:

1 **SEC. 8. LEASE SALES OFF THE COASTS OF SOUTH CARO-**
2 **LINA AND CALIFORNIA.**

Page 7, line 5, after "lina" insert "and the coast of California".

Page 7, line 8, strike "the State of South Carolina" and insert "each such State".



4. **AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES**

A

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. MARKEY OF MASSACHUSETTS

Add at the end the following:

1 **SEC. ____ . REQUIREMENT TO OFFER GAS FOR SALE ONLY**

2 **IN THE UNITED STATES.**

3 The Secretary of the Interior shall require that all

4 gas produced under a lease issued under this Act shall

5 be offered for sale only in the United States.



5. **AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE
FOR 10 MINUTES**

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. MARKEY OF MASSACHUSETTS

Add at the end the following:

1 **SEC. ____ . SAFETY REQUIREMENTS.**

2 The Secretary of the Interior shall require that drill-
3 ing operations conducted under each lease issued under
4 this Act meet requirements for—

5 (1) third-party certification of safety systems
6 related to well control, such as blowout preventers;

7 (2) performance of blowout preventers, includ-
8 ing quantitative risk assessment standards, subsea
9 testing, and secondary activation methods;

10 (3) independent third-party certification of well
11 casing and cementing programs and procedures;

12 (4) mandatory safety and environmental man-
13 agement systems by operators on the outer Conti-
14 nental Shelf (as that term is used in the Outer Con-
15 tinental Shelf Lands Act); and

16 (5) procedures and technologies to be used dur-
17 ing drilling operations to minimize the risk of igni-
18 tion and explosion of hydrocarbons.



6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE HOLT
OF NEW JERSEY OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. HOLT OF NEW JERSEY

Add at the end the following:

1 **SEC. ____ . ELIGIBILITY FOR LEASES.**

2 (a) **LIMITATION ON ELIGIBILITY.—**

3 (1) **IN GENERAL.**—Beginning 1 year after the
4 date of enactment of this Act, the Secretary of the
5 Interior shall not offer any lease pursuant to this
6 Act to a person described in paragraph (2) unless
7 the person has renegotiated each covered lease with
8 respect to which the person is a lessee, to modify the
9 payment responsibilities of the person to require the
10 payment of royalties if the price of oil and natural
11 gas is greater than or equal to the price thresholds
12 described in clauses (v) through (vii) of section
13 8(a)(3)(C) of the Outer Continental Shelf Lands Act
14 (43 U.S.C. 1337(a)(3)(C)).

15 (2) **PERSONS DESCRIBED.**—A person referred
16 to in paragraph (1) is a person that—

17 (A) is a lessee that—

1 (i) holds a covered lease on the date
2 on which the Secretary considers the
3 issuance of the lease under this Act; or

4 (ii) was issued a covered lease before
5 the date of enactment of this Act, but
6 transferred the covered lease to another
7 person or entity (including a subsidiary or
8 affiliate of the lessee) after the date of en-
9 actment of this Act; or

10 (B) any other person that has any direct
11 or indirect interest in, or that derives any ben-
12 efit from, a covered lease.

13 (b) DEFINITIONS.—In this section:

14 (1) COVERED LEASE.—The term “covered
15 lease” means a lease for oil or gas production in the
16 Gulf of Mexico that is—

17 (A) in existence on the date of enactment
18 of this Act;

19 (B) issued by the Department of the Inte-
20 rior under section 304 of the Outer Continental
21 Shelf Deep Water Royalty Relief Act (43
22 U.S.C. 1337 note; Public Law 104–58); and

23 (C) not subject to limitations on royalty re-
24 lief based on market price that are equal to or
25 less than the price thresholds described in

1 clauses (v) through (vii) of section 8(a)(3)(C) of
2 the Outer Continental Shelf Lands Act (43
3 U.S.C. 1337(a)(3)(C)).

4 (2) LESSEE.—The term “lessee” includes any
5 person or other entity that controls, is controlled by,
6 or is in or under common control with, a lessee.



7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
HASTINGS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

91

AMENDMENT TO RULES COMMITTEE PRINT 112-

29

OFFERED BY MR. HASTINGS OF FLORIDA

Add at the end the following:

1 **SEC. ____ . LEASES MUST REQUIRE ESTIMATIONS OF PRO-**
2 **DUCTION AND EFFECT ON PRICES.**

3 The Secretary of the Interior shall require under each
4 lease issued under this Act that each application for a per-
5 mit to drill a well includes detailed estimations of—

6 (1) the amount of oil and gas that is ex-
7 pected—

8 (A) to be found in the area where the well
9 is drilled, in the case of an exploration well; or

10 (B) to be produced by the well, in the case
11 of a production well; and

12 (2) the amount by which crude oil prices and
13 consumer prices would be reduced as a result of oil
14 and gas found or produced by the well, and by when
15 the reductions would occur.



8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE
HASTINGS OF FLORIDA OR HIS DESIGNEE, DEBATABLE FOR 10
MINUTES

10

AMENDMENT TO RULES COMMITTEE PRINT 112-
29
OFFERED BY MR. HASTINGS OF FLORIDA

Add at the end the following:

1 **SEC. ____ . LEASES MUST REQUIRE ESTIMATIONS OF PRO-**
2 **DUCTION AND RESULTING CLIMATE CHANGE.**

3 (a) IN GENERAL.—The Secretary of the Interior shall
4 require under each lease issued under this Act that each
5 application for a permit to drill a well includes detailed
6 estimations of—

7 (1) the amount of oil and gas that is ex-
8 pected—

9 (A) to be found in the area where the well
10 is drilled, in the case of an exploration well; or

11 (B) to be produced by the well, in the case
12 of a production well; and

13 (2) climate change that will result from con-
14 sumption of oil and gas found pursuant to the lease.

15 (b) CLIMATE CHANGE DEFINED.—In this section the
16 term “climate change” means change of climate that is
17 attributed directly or indirectly to human activity that al-
18 ters the composition of the global atmosphere and that

- 1 is in addition to natural climate variability observed over
- 2 comparable time periods.



House Calendar No. _____

112TH CONGRESS
2D SESSION

H. RES. _____

Report No. 112-_____

Providing for consideration of the bill (H.R. 4078) to provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent, and providing for consideration of the bill (H.R. 6082) to officially replace, within the 60-day Congressional review period under the Outer Continental Shelf Lands Act, President Obama's Proposed Final Outer Continental Shelf Oil & Gas Leasing Program (2012-2017) with a congressional plan that will conduct additional oil and natural gas lease sales to promote offshore energy development, job creation, and increased domestic energy production to ensure a more secure energy future in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2012

Ms. FOXX, from the Committee on Rules, reported the following resolution;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

Providing for consideration of the bill (H.R. 4078) to provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent, and providing for consideration of the bill (H.R. 6082) to officially replace, within the 60-day Congressional review period under the Outer Continental Shelf Lands Act, President Obama's Proposed

Final Outer Continental Shelf Oil & Gas Leasing Program (2012-2017) with a congressional plan that will conduct additional oil and natural gas lease sales to promote offshore energy development, job creation, and increased domestic energy production to ensure a more secure energy future in the United States, and for other purposes.

1 *Resolved*, That at any time after the adoption of this
2 resolution the Speaker may, pursuant to clause 2(b) of
3 rule XVIII, declare the House resolved into the Committee
4 of the Whole House on the state of the Union for consider-
5 ation of the bill (H.R. 4078) to provide that no agency
6 may take any significant regulatory action until the unem-
7 ployment rate is equal to or less than 6.0 percent. The
8 first reading of the bill shall be dispensed with. All points
9 of order against consideration of the bill are waived. Gen-
10 eral debate shall be confined to the bill and shall not ex-
11 ceed two hours equally divided and controlled by the chair
12 and ranking minority member of the Committee on the
13 Judiciary and the chair and ranking minority member of
14 the Committee on Oversight and Government Reform.
15 After general debate the bill shall be considered for
16 amendment under the five-minute rule. In lieu of the
17 amendments in the nature of a substitute recommended
18 by the Committees on the Judiciary and Oversight and
19 Government Reform now printed in the bill, an amend-
20 ment in the nature of a substitute consisting of the text

1 of Rules Committee Print 112-28, modified by the amend-
2 ment printed in part A of the report of the Committee
3 on Rules accompanying this resolution, shall be considered
4 as adopted in the House and in the Committee of the
5 Whole. The bill, as amended, shall be considered as the
6 original bill for the purpose of further amendment under
7 the five-minute rule and shall be considered as read. All
8 points of order against provisions in the bill, as amended,
9 are waived. No further amendment to the bill, as amended,
10 shall be in order except those printed in part B of the
11 report of the Committee on Rules. Each such further
12 amendment may be offered only in the order printed in
13 the report, may be offered only by a Member designated
14 in the report, shall be considered as read, shall be debat-
15 able for the time specified in the report equally divided
16 and controlled by the proponent and an opponent, shall
17 not be subject to amendment, and shall not be subject to
18 a demand for division of the question in the House or in
19 the Committee of the Whole. All points of order against
20 such further amendments are waived. At the conclusion
21 of consideration of the bill for amendment the Committee
22 shall rise and report the bill, as amended, to the House
23 with such further amendments as may have been adopted.
24 The previous question shall be considered as ordered on
25 the bill, as amended, and any further amendment thereto

1 to final passage without intervening motion except one
2 motion to recommit with or without instructions.

3 SEC. 2. At any time after the adoption of this resolu-
4 tion the Speaker may, pursuant to clause 2(b) of rule
5 XVIII, declare the House resolved into the Committee of
6 the Whole House on the state of the Union for consider-
7 ation of the bill (H.R. 6082) to officially replace, within
8 the 60-day Congressional review period under the Outer
9 Continental Shelf Lands Act, President Obama's Pro-
10 posed Final Outer Continental Shelf Oil; Gas Leasing Pro-
11 gram (2012-2017) with a congressional plan that will con-
12 duct additional oil and natural gas lease sales to promote
13 offshore energy development, job creation, and increased
14 domestic energy production to ensure a more secure en-
15 ergy future in the United States, and for other purposes.
16 The first reading of the bill shall be dispensed with. All
17 points of order against consideration of the bill are waived.
18 General debate shall be confined to the bill and shall not
19 exceed one hour equally divided and controlled by the chair
20 and ranking minority member of the Committee on Nat-
21 ural Resources. After general debate the bill shall be con-
22 sidered for amendment under the five-minute rule. In lieu
23 of the amendment in the nature of a substitute rec-
24 ommended by the Committee on Natural Resources now
25 printed in the bill, it shall be in order to consider as an

1 original bill for the purpose of amendment under the five-
2 minute rule an amendment in the nature of a substitute
3 consisting of the text of Rules Committee Print 112-29.
4 That amendment in the nature of a substitute shall be
5 considered as read. All points of order against that amend-
6 ment in the nature of a substitute are waived. No amend-
7 ment to that amendment in the nature of a substitute
8 shall be in order except those printed in part C of the
9 report of the Committee on Rules accompanying this reso-
10 lution. Each such amendment may be offered only in the
11 order printed in the report, may be offered only by a Mem-
12 ber designated in the report, shall be considered as read,
13 shall be debatable for the time specified in the report
14 equally divided and controlled by the proponent and an
15 opponent, shall not be subject to amendment, and shall
16 not be subject to a demand for division of the question
17 in the House or in the Committee of the Whole. All points
18 of order against such amendments are waived. At the con-
19 clusion of consideration of the bill for amendment the
20 Committee shall rise and report the bill to the House with
21 such amendments as may have been adopted. Any Member
22 may demand a separate vote in the House on any amend-
23 ment adopted in the Committee of the Whole to the bill
24 or to the amendment in the nature of a substitute made
25 in order as original text. The previous question shall be

- 1 considered as ordered on the bill and amendments thereto
- 2 to final passage without intervening motion except one
- 3 motion to recommit with or without instructions.